

REMARKS

Claims 1, 8, and 15 have been amended. Claims 1-21 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

Section 101 Rejection:

The Office Action rejected claims 15-21 under 35 U.S.C. § 101, asserting that the claims are directed to non-statutory subject matter. Specifically, the Examiner asserts that claims 15-21 “are not limited to tangible embodiments,” in view of material in the specification that describes a computer-accessible medium as potentially including intangible signals. The Examiner further comments that “[t]o overcome this type of rejection the claims need to be amended to include only the physical computer media and not a transmission media . . . carrier medium and transmission media would not be statutory, but storage media would be statutory.” Office Action, p. 3, emphasis added. The Examiner further asserts that claims 15-21 “are not directed towards the final result that is useful, tangible and concrete,” and that claims 15-21 are directed to “nonfunctional descriptive material recorded on [a] computer readable medium.”

Applicants traverse this rejection and note that in an amendment mailed February 7, 2007, claim 15 was amended to recite “a tangible, computer-accessible storage medium,” which appears to be precisely the language the Examiner indicates would be statutory. Dependent claims 16-21 were also amended to recite “the computer-accessible storage medium” as previously recited.

Applicants further submit that claim 15 is in fact directed to statutory subject matter that, as a whole, accomplishes a practical application. Specifically, claim 15 recites a computer-accessible storage medium that includes instructions executable to implement a file system that is configured to perform a number of actions that are useful, tangible and concrete. The recited file system, implemented by the executable instructions, is configured to store file system content on a storage device, which is itself

a useful, concrete and tangible result. The recited file system is further configured to present a programming-language-independent interface to an application, where the programming-language-independent interface is configured to allow the application to access said file system content.

Finally, Applicants note that the Examiner's comments regarding "nonfunctional descriptive material" do not apply to claims 15-21. According to MPEP 2106.01, "'functional descriptive material' consists of data structures and computer programs which impart functionality when employed as a computer component. . . . [while] '[n]onfunctional descriptive material' includes but is not limited to music, literary works, and a compilation or mere arrangement of data." (emphasis added) Further, this section notes that "[w]hen functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized." Applicants submit that instructions referred to in claim 15 are indicative of computer programming and therefore correspond to functional rather than nonfunctional descriptive matter when stored on a computer-accessible storage medium.

For at least the foregoing reasons, Applicants submit that claims 15-21 recite statutory subject matter, and respectfully request that the 35 U.S.C. § 101 rejection be withdrawn.

Provisional Obviousness-type Double Patenting Rejections:

The Office Action provisionally rejected claims 1-21 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-22 of copending Application No. 10/951,511 (the "'511 Application'") and separately as being unpatentable over claims 1-22 of copending Application No. 10/869,723 (the "'723 Application'"). Applicants traverse this provisional rejection for at least the following reasons.

The Examiner's rejection is improper. As noted in MPEP 804.II.B.1, the *Graham* factual inquiries are employed when making an obviousness-type double patenting rejection. Further, any such rejection "should make clear: (A) The differences between the inventions defined by the conflicting claims . . . ; and (B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim at issue is anticipated by, or would have been an obvious variation of, the invention defined in a claim in the [comparison reference]." By contrast, the Examiner has merely concluded that the instant claims and the claims in the referenced applications "are not patentably distinct from each other because they are substantially similar in scope and they use the same limitations, using varying terminology." This conclusion is unsupported by any analysis whatsoever of the actual claim language.

Regarding the '511 Application, Applicants note that each of the independent claims of the instant application includes features that are neither taught nor suggested by any of the claims in the '511 Application, and vice versa. For example, claim 1 requires that a file system include a programming-language-independent interface through which an application is configured to access said file system content, wherein said programming-language-independent interface is further configured to receive a request to access said file system content from said application without dependence on a programming language in which said application is implemented. None of the claims of the '511 Application include any language that is suggestive of a programming-language-independent interface configured as required by claim 1. Because this feature of claim 1 is neither taught nor suggested by the claims of the '511 Application, the pending claims cannot be said to be either anticipated or obvious in view of the claims of the '511 application.

A similar analysis applies with respect to the '723 Application. That is, the programming-language-independent interface of claim 1 finds no support whatsoever among the pending claims of the '723 Application. Thus, for at least these reasons, Applicants submit that the features of independent claim 1 and similar independent claims 8 and 15 are neither anticipated by nor obvious in view of the claims of either the

‘511 Application or the ‘723 Application. Therefore, Applicants submit that the provisional double patenting rejection is unsupported.

Section 102(e) Rejections:

The Office Action rejected claims 1-21 under 35 U.S.C. § 102(e) as being anticipated by Borthakur et al. (U.S. Patent Application Publication No. 2005/0114406) (hereinafter, “Borthakur”). Additionally, the Office Action provisionally rejected claims 1-21 under 35 U.S.C. § 102(e) as being anticipated by copending Application No. 10/723,729 (the ‘729 application). Applicants note that the ‘729 application is identical to and was published as the Borthakur reference cited above. Therefore, Applicants submit that the provisional rejection is redundant with respect to claims 1-21, and that the comments below apply equally with respect to both rejections.

While Applicants traverse these rejections, to expedite issuance of a patent, Applicants have amended the independent claims to further clarify their distinctive features. Applicants submit that the Borthakur reference does not teach or suggest the features of amended claim 1. Specifically, Borthakur does not teach or suggest a system comprising a storage device configured to store a plurality of files; and a host device configured to implement a file system, wherein the file system is configured to manage access to the storage device and to store file system content on the storage device, wherein the file system comprises a programming-language-independent interface through which an application is configured to access the file system content, wherein the programming-language-independent interface is further configured to receive a request to access the file system content from the application without dependence on a programming language in which the application is implemented.

In rejecting claim 1, the Examiner asserts that the SCSI and ATAPI interfaces mentioned in para. 34 of Borthakur disclose the programming-language-independent interface recited in claim 1. However, these features are distinct in kind as well as functionality. Specifically, the cited passage of para. 34 is describing “device drivers 224

through which local file systems 240 may access storage devices 230” (emphasis added), where the device drivers 224 provide support for device interfaces such as SCSI and ATAPI. That is, this passage of the Borthakur reference does not describe an application accessing file system content via a file system interface, as recited by claim 1, but rather a local file system accessing a storage device via a device driver interface. These are simply incommensurate features.

Moreover, the Borthakur reference does not describe in any way that a file system presents a programming-language-independent interface that receives a request to access file system content from the application without dependence on a programming language in which the application is implemented, as required by claim 1. No mention of programming-language independence is made in the reference, whether with regard to applications or any other features. Further, device drivers such as those mentioned in Borthakur are not inherently programming-language-independent. As is well known in the art, device drivers may be implemented via statically linked libraries, and such libraries may be coded to support specific programming languages. Thus, merely demonstrating that a reference discloses device driver support for SCSI or ATAPI devices does not amount to a disclosure of a programming-language interface of a file system through which an application is configured to access file system content without dependent upon the application’s implementation programming language, as required by claim 1.

Similar arguments apply to independent claims 8 and 15, which recite features similar to those of claim 1. Therefore, Applicants submit that the Borthakur reference fails to anticipate independent claims 1, 8, and 15. Applicants note that the rejections of various ones of the dependent claims are also unsupported. However, as the rejections of the independent claims have been shown to be unsupported, further discussion of the dependent claims is unnecessary at this time.

CONCLUSION

Applicants submit the application is in condition for allowance, and notice to that effect is respectfully requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicant hereby petitions for such extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5760-18500/AMP.

Respectfully submitted,

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